**Class 1**

Types of property

* real property (land, has a permanence, capable of ownership by individuals)
* personal property (chattels)
* The ownership and the various interests or rights in property are registered or can be registered under the Land Title Act. LTA is a system of land registration, BC first in Canada to adopt. System by which our title is registered, at the Land Title Office.

Fee Simple, hierarchy of property interests

* The government is the owner of property and the property passes from the crown to private ownership. Rest is under Crown. Ownership can be broken down into rights.
* These rights start at the height of the “fee simple owner”, person who owns the freehold
* then a lesser form of ownership called a “life estate,” only held for the person’s lifetime
* Even lesser form of ownership, “tenant.” Here you have the right of exclusive occupation for a set period of time. A lessee is a lease-holder or a tenant in the property. Landlord owns/holds the fee simple, but has leased the right of exclusive occupation to the tenant. Owner, tenant, and people can have right to cross or enter the property (exclusive occupation can thus be modified)
* Easements are rights of way across property owned by other people. Sewer-lines, water-lines, run through a house, as public utilities, are forms of easements. They can access a property that a tenant or person with exclusive occupation cannot deny. You can have private easements as well, where two lots are together, but landlockedDone by agreement between people, registered in LTO. Person using easement is often charged by the owner, as it drops property value.

Indefeasibility

* BC guarantees registered fee simple holder. Promise that title is indefeasible and cannot be attacked. Transfers of land are done differently from transfers of personal property. Indefeasibility can protect you from defects in your title. Only land is registered in this way, rest are personal. No guarantee for personal property.
* Register your interests under the LTA. Tenant can register their interest under LTA as long as their lease is 3 years or more. This gives notice to third parties. Without registration, if someone buys the land, you have no way of guaranteeing that the new owner will honour lease.

 Personal property

* anything movable, physical. Paper, equipment, etc. If you can’t move it, it’s a “fixture.”
* This stuff, this tangible personal property/chattel, can be made part of the land if made attached to it. Becomes fixture – things that cannot be removed without causing damage. Discussions of how readily removed something is. Also, another question is what the purpose is, why it’s attached to the land. Was it to enhance the land, or was it to better enjoy the chattel?
* You can have tangible chattels, things you can touch and feel, physical objects, and intangible chattels. These are rights of a personal nature for “choses in action.” Instead of being physically possessed, their rights are enforced by action in the courts. Things like stocks, contracts, intellectual property . Tangible stuff you enjoy by physical possession, intangible chattels are enforced by courts

Utilitarianism

* Utilitarian is very much part of our thinking nowadays, only so much land, these assets should be put to greater good. Competition there between ownership and public interest.
* Mineral rights used to be privately owned by the people who owned the surface. Under the Land Act of BC, those mineral rights have been taken away and are vested in the Crown/Province. Also don’t own the water next to the property or the water flowing through the property. All owned by the government (utilitarian) Can’t build out onto water, as water is owned by government. You need permission/licensing to do so, or municipality can tear it down, even if you own the waterfront property, as it’s considered trespassing.

Two types of injunction

* prohibitory injunction (order to stop doing something) and mandatory injunction (order to do something, like tear something down)

**Class 2**

Crown Land/Grant

* Crown owns the land that’s not been sold to individuals and held in private ownership. Over 90% is Crown land and how the Crown deals with it is governed by the land act
* All property in Canada originally owned by the Crown.
* When you buy land, you buy from Crown, not the vendor. Vendor transfers rights to the land to you, but the title comes from the Crown.
* Property is dealt with in legislative assembly of BC, in provincial system.

Property Law Jurisdiction

* Big source of law is statutes, legislation passed by legislative bodies. Primary legislative body for Property is assembly of BC.
* Property disputes are dealt with in the BC Supreme Court.
* Common law is universal, applies throughout commonwealth unless changed by statute.
* If lose, can appeal to higher court, the BC Court of Appeal. If still lose, can appeal to Supreme Court of Canada.

Property as a bundle of rights

* Common law recognized that owner of surface of the land, owned the land “up to the heavens/ad coelum” and “ad inferos/to the center of the earth.” These common law rights affected by statute.
* Land Act of BC, for instance, has taken away mineral rights, despite common law giving it to owner. Mineral rights now belongs to the province.
* A property owner also has other characteristics given by common law decisions by judges. Like access rights, right to get to your property.
* Access rights, development rights, water right are associated with ownership. Most water rights have been taken from owner of adjoining property
* Right to Exclude. If you own property, you have the right to exclude people from accessing it (from common law). BC Trespass Act makes it an offence.
* Right of exclusive occupation. Nobody else can come into your property without your permission. Kelson case, sign on wall of adjacent building projects 8 inches over the property line, violates his right of exclusive occupation by entering his airspace.
* License is just permission to occupy.
* Tenants cannot, however, alter a premises. Tenant is in a fiduciary position to return the property to the landlord in the same condition that she got it.

Kelson

* court declared a mandatory injunction for Kelson to tear down the sign rather than just give token damages. Equitable remedy vs. Weaker common law remedy, in this case. It was a trespass, went over the property line into airspace, though didn’t touch the ground. Still a trespass even if it doesn’t touch the structure or the ground.

More Property Rights

* the right of transfer. Person who owns the property has the right to dispose of it. Another common law right, very strongly supportive of rights of alienation/transferability.
* When one dies, one can dispose of one’s property by will, called “divesting property,” give it by will on death. Dying without a will, then property passes to next of kin under the state administration act.

Nuisance (right to use and enjoyment of our property)

* something happening on property we don’t own that affects the use and enjoyment of our property. Not a trespass.
* Noise pollution can be interference or nuisance, lighting can be an issue, smoke, pollution type nuisance. Interferes with reasonable use or enjoyment of property next door.

**Class 3**

Kelsen v. Imperial Tobacco:

* sign projects over property line. Landlord said it was ok, then Kelsen took over as new tenant. Tenant has rights of common law. Common law recognizes rights of tenant to exclusive occupation of the premises. Does this extend to ad coelum/ad inferos
* Could be a nuisance. Person doesn’t come onto your property or cross the line, but what they do on their side of the property line interferes with the use and enjoyment of your property.
* Imperial Tobacco says it was public airspace, Kelsen says it was encroachment. Imperial says tenancy only applies to the building.
* Kelsen says under common law, he is tenant and has exclusive occupation of not just premises of the store but also the airspace above the store
* Historically, when an equitable remedy is involved, it’ll be judge alone. In BC, we have kept the possibility a civil jury. Often lawyer will ask for a civil jury if they draw a judge they don’t like
* Point of Kelsen case: was this a trespass or a nuisance. Decides on trespass.
* Problem in Kelsen is how high to go, have to balance rights of owner to enjoy use of his land and the rights of the public. Balance is best struck by restricting the rights of the owner over the height of the airspace that affects use and enjoyment of his structure. Above that is public.
* Judge uses academic writers here, says those writers decided airspace isn’t unlimited to the heavens. Judge agrees with that due to philosophical sense, doing greatest good to the greatest number. Strike balance between public right & property owner’s right by limiting owner’s right to surface & the airspace above to the height of use & enjoyment by surface owner. Tenant also gets these rights
* You go downwards as well to the same principle. If we own surface of the land, we own up to reasonable use and enjoyment and we own down, under the surface, to reasonable use and enjoyment. It applies both ways.

Kelsen’s Remedy (Lord Cairns Act)

* monetary damages would be nominal and hardly worthwhile to sue for. What Kelsen wants is an order, injunction, requiring the removal of that sign from the property.. Financial loss to Kelsen from that sign being there is negligible so damages would be nominal.
* Where the legal remedy is inadequate, damages inadequate, “equity will not suffer a wrong,”
* Imperial argued that it’s a trespass, and while injunction is usually available here, they’re asking judge not to do the usual thing and use Lord Cairn’s Act to refuse injunction and substitute damages instead, though Kelsen has right to injunction.
* says if he gives equitable damages under Lord Cairn’s Act, they’d be nominal and he’d basically be authorizing a trespass as the sign would continue to exist, he’d be authorizing a wrong-doing and it’s not fair to Kelsen. Gives Kelsen mandatory injunction.
* Prior to Lord Cairn’s Act, the court of chancery (equity) could not give damages, equitable damages didn’t exist, as that would put it in conflict with common law. They gave power to award damages to Court of Chancery in 1858 to stop people from having to run from court to court. Lord Cairn’s Act is eventually repealed in 1873-75. Lots of courts ignored this repeal.

**Class 4**

Trespass vs. Nuisance

* Trespass is where someone comes into property without owner’s permission. Trespass you can get monetary damages without proving losses.
* With a nuisance, you need to prove a loss

Kelsen’s remedy

* Common law: Kelsen’s loss, not profit of the defendant, that is considered, only damages
* Kelsen went in with idea that common law was not good enough, damages nominal and highly speculative. Also, once he gets his judgment for nominal damages, he has to collect. If Imperial doesn’t pay, has to call collection agency.
* Court can give injunction where legal remedies of damages are inadequate. Can get a prohibitory injunction to stop something from happening.
* Mandatory injunction: make party do something, order to do something positive instead of stop doing what you’re doing (which is prohibitive.
* Imperial asked for equitable damages under Lord Cairns’, so they wouldn’t have to incur expenses from tearing down sign, which they already paid for. Kelsen said he went to equity because damages weren’t good enough. Lord Cairns can give equitable damages in addition to or in substitution to injunction or specific performance (Imperial wanted substitution)
* Problem is, if court did this, they’d be sanctioning a wrong. They recognize violation of rights, but saying that Kelsen has to settle for monetary recovery and leave the sign in violation. Whereas common law only remedies for past wrongs, equitable can look to the future as well. Equitable can compensate not only for wrong that occurred up to the action, but also for future wrong of allowing the sign to remain up, so would be a bigger pay-out. Equitable damages though, would sanction the indefinite continuation of the wrong.

Possible Relaxation of Mandatory Injunctions (other options court has)

* Removal, mandatory injunction, can be painful and financially harsh. What if it’s not a sign, you have to tear down a whole building that’s over the property line?
* To overcome this, Sect. 36 of Property Law Act was enacted. This says that if the encroachment is a fence or a building over the property line, then the court doesn’t have to give a mandatory injunction. Court can order an easement. Party who committed the trespass will have an easement as right of access over the victim, but trespasser have to pay compensation for that easement.
* Court can also move the property line, this reduces the lot size of the victim, so again compensation will be paid to the person whose property is now smaller.

Bernstein/Skyviews

* Bernstein think aerial photography of his land could aid terrorist actions. Not just infringement of his privacy but could fall into wrong hands and put his life in danger.
* Court held that the landowner owns the airspace above the land to the height necessary for use or enjoyment of the land. Airplane that went over Bernstein’s land was hence not trespass, several hundred feet up.
* Could be a nuisance, but Berstein would have to prove a loss and judge says taking one photo of his land wasn’t significant enough to cause damage.
* Height of airspace, “use and enjoyment,” is very vague. You can sell your airspace rights.

Trees: Trespass or Nuisance?

* it’s not trespass because it’s not the property owner’s fault, it’s the tree’s fault for growing the way that it did. It’s not deliberate intrusion by the owner unless it extended over the line when first planted. If not, it’s considered a nuisance.
* That said, if tree started on neighbour’s property, the branches belong to him too, but as a nuisance, owner can cut branches for the extent that they cross the property line. That said, the branches are still their property though, so after cutting them, chuck them over. It’s actually theft if you dispose of them yourself.

**Class 5**

Owning Airspace

* Can be owned like land under BC Torrens system
* S. 138 says we are dealing with air space parcels. Air space parcels are a volumetric measure. Whereas surface plan is in two dimensions, an air space parcel is a three dimensional representation.
* Air Space Plan – an air space parcel means a volumetric parcel. Owner of the surface can apply to have a separate title issued for the air space above the land. It’s an elevation derived from a source approved by the surveyor general. Geometric, corresponds to the surface of the Earth, volume is not going to be perfect rectangle.
* Air space constitutes land and lies in grant
* Air space parcel devolves, passes from one person to another, may be transferred, sold, leased. Can put mortage on it. Dealt with in the same manner or form as land registered under the act. It can also be sub-divided into separate titles.
* s.140 gives us cautionary note, grant of air space parcel does not transfer to grantee an easement (right of access to cross over someone else’s property). If I grant you an air space parcel, I’m not granting you an easement.
* Owner of surface can create one or several airspace parcels.
* Retail space on the ground is one air space parcel, and residential second and third floors could be separate air space parcels. Each one of these can be further subdivided into individual units for purchasers to own.

Strata

* When air space is registered, automatically under strata property act, the result is that there are separate titles for individual units, can be sold to purchasers who can do as see fit with them.
* Automatically become members of strata corporation governing these units. Could be a separate strata corporation for each floor.
* When the strata plan is accepted by the registry, a strata corporation becomes a new legal entity. This entity does not own anything, does not own any part of these units, which belong to individual owners. Strata corporation manages the building, or the part of the building for which it represents the unit holders.
* We all live together and have to get along, even if own individual units. Unit owners are thus subject to control by form of law created by strata corporation: bylaws
* The members of the strata corporation elect a board of directors called a “strata council,” which is responsible for maintenance of the building, for the upkeep and major repairs
* One vote per unit in the strata corporation, regardless of number of occupants of that unit. If you own multiple units, get that number of votes.
* Common costs (for instance, renovating lobby) are proportional to square footage owned.
* Unit owners property extends to the middle of the walls. If a strata lot is separated from another strats lot, the boundary is the middle/center of the wall/floor/ceiling that divides them.

Skybridges/walkways

* S.142(3), airspace over highway and roadways belong to the city, indefeasible. To create airspace parcel necessary to build skybridge of Bay downtown, they would purchase from City of Vancouver that airspace parcel. City would have to get a title to the street below and draft out this airspace parcel to sell it to Hudson’s Bay.
* Owner of the surface owns airspace above and can create an air space parcel, which would be a separate title from the land. You can further subdivide those parcels into individual units in a strata corporation.

Common Property of a Strata Corporation

* S.66 of strata property act, an owner of a unit owns the common property and the common assets of the strata corporation in a share equal. Common property is the area, like a gym, the common assets are the chattels in the area, the weights. Take total square footage of a building under a corporation, figure out what the square footage of this unit is in relation to total, and then say this unit owner owns amount of common property relative to this calculation.
* Property owned in common with other unit holders, NOT the strata corporation. Each unit owner owns his unit plus his proportionate share, in common with the other owners
* Sometimes, limited common ownership, like a parking space, means you get exclusive usage of that common property.

Bare Land Strata

* you can have a strata arrangement just for surface land, doesn’t have to be a building. Bare Land Strata Plan means a strata plan under which boundaries of units are determined on horizontal plane (survey scheme).
* Bare Land Stratas are used in recreational areas where you’re going to have recreational development, gives common property for people who can buy land but not afford amenities like swimming pools, etc. BLS gives common property.
* There are no buildings on BLS, it’s up to individual purchasers to build buildings, but the amenities will be common property (swimming pool, golf course, etc). These are amenities that the individual owner could not provide for themselves, but collectively, can provide for.
* Bare land strata involves no buildings, unimproved land. Parcels of land for individual ownership while other parcels are common property.

Strata Corporation Accountability, Buying into a Strata

* strata corporation required to maintain notes of annual general meetings and council meetings.
* A purchaser is entitled to see the financial records of the strata corporation, to see what they’re buying into, and are also entitled to see the notes or minutes of meetings

Powers of the Strata Corporation

* There are implied easements: strata council has access to your unit and the wall to repair utilities, etc.
* Strata corporation is distinct legal entity from unit owners and levies charges onto unit holders for repairs, etc. Each unit holder is nonetheless a member of the strata corporation so if the corporation incurs a bill they can’t pay, it gets put onto the unit holders.
* Bylaw often allows council to hire a building management company. This company charges a fee to the strata corporation, they take over the management of the building. If they need a repair, they’ll find the repairmen, plumber, etc. Property manager, provide management for maintenance and upkeep of the building and charge management fee to strata corporation.
* Monthly fees take care of regular, ordinary expenses, common expenses, special assessments. Extra fees for special or extraordinary expenses.
* Major decisions must be passed by a ¾ vote (SPA, s. 71)

**Class 6**

Tenant in Common vs. Joint Ownership

* A tenant in common is someone who has shared possession of property with someone else.
* Joint ownership is a relationship, usually done between spouses or parent/child, idea being that in a joint ownership, on the death of one of the joint tenants, the property, automatically and by law, passes to the surviving joint owner, who becomes the owner.
* “Right of survivorship,” used to keep the property outside of the estate of the deceased. Directly passes from one joint tenant to the other.
* Joint ownership cannot be disposed of by will or be sold, as it’s tied up in the joint tenancy. If it is sold, this joint ownership is severed.

Strata Ownership

* cannot take exclusive possession of common property.
* Your share in common passes with the sale of your unit, your share in common is included with the title for your unit. When your property is valued, the property includes value of share in common property and taxable common assets, as well as the unit itself.
* A unit holder in a common project has a monthly fee for the maintenance and upkeep of the building these are common expenses, related to upkeep of common property and assets
* Legal ownership of unit carries with it right of sale, mortage

Strata Corporation

* duty of strata corporation to keep the common property in reasonable shape.
* Strata corporation may by bylaw make an owner responsible for the repair and maintenance of limited common property that the owner has the right to use. Individual units in condo may have parking spaces and lockers. Whole parking lot is common property, but the space allocated to the individual unit is called “limited common property,” exclusive use.
* Common property is subject to common usage. If other unit owners don’t approve of an owner’s use of this common property, will write a complaint to strata council. Strata council can impose fines under the strata property act.

Fixtures

* Fixtures are personal property, as the classification of personal property can change when the personal property becomes attached, annexed, or affixed to the real property.
* “Whatever is affixed to the soil, belongs to the soil.” Means by the common law, if you bring chattels onto the property and affix them to the property, the ownership of those chattels becomes of the ownership of the land. Whoever owns the land owns those chattels.
* Buildings and houses are considered to be fixtures. If you buy a piece of real estate, you’re expected to get the house with it.
* Chattels are tangible, physical assets, moveable property. When it becomes annexed to the realty, it becomes part of the realty and by law the ownership of that chattel passes from the person who brought it to the property to the person who owns the land/property
* Specify “purchase to sale” if you want chattels included with sale of property, if not fixtures

Determining if something is a Fixture

* Two things to look at : method and degree of annexation and affixation, and the object or the purpose of annexation or affixation.
* Method: how is it attached, can it be removed easily? Can you remove without causing damage? If it’s fixture, it belongs to whoever owns the building as an improvement to the property.
* Commercial property: the tenant can remove those chattels as long as they repair the damage to the building. Different for standard tenancy. Cannot do this if no longer have a lease, but otherwise, they can convert fixtures back into chattels.
* Method or degree of affixation: if just resting on the land with no affixation, they are presumed to be chattels unless circumstances show that the purpose of them was to become part of land.
* Purpose of annexation is objectively determined by looking at all the circumstances. Don’t just ask the tenant about his intention, this has to be objectively determined. You then look at the intention of the party subjectively and see how it objectively jives with what is physically observable.
* If something is attached for the betterment of the chattel, to enjoy the item, it remains a chattel, however if it is affixed for the benefit of the property, it’s a fixture.
* Method and degree of affixation/annexation, whether it’s permanent or temporary, and the ease of removal or serious damage incurred upon removal.

**Class 7**

Affixation

* if the article is simply resting on its own weight, it’s presumed to be a chattel, not part of the land, unless the intention is for it to be a part of the land.
* Articles affixed even slightly to the land (nails and screws) are to be considered part of the land, ownership passes to owner of the land unless the surrounding circumstances show that person who attached them intended them to be continued to be owned by chattel owner.

Re Davis

* removable bowling lanes. Have to determine degree of affixation and the object/purpose of affixing. Bowling lanes remained chattel, as affixation was to improve the use of the bowling lanes and make those lanes workable, not so much the improvement for the property.
* Degree of affixation was also slight, just resting on the floor and attached by poles, not cemented in. Affixed for the purpose of using those alleys for bowling, with the intention that they could be removed. Degree of affixation lacking and purpose was to enjoy the bowling alley and not to upgrade the property itself and turn it into a bowling alley/location.

Le Salle Recreations v. Canadian Camdex

* Distinction between chattel/personal property and land. This case involved wall-to-wall carpeting in a hotel. It’s obviously chattel, it’s movable, it can be carried around, it’s tangible.
* It’s installed by a “tactless” method leading to easy removal
* LaSalle installed the carpeting and expected hotel would pay for it over time, but was never paid. LaSalle’s only method of protecting themselves is that they take it back.
* 5 principles of Stack/Eaton are set out again. Primary consideration was method and degree of attachment. Conclusion was that annexation was considered “slight,” carpet is resting on its own weight and its attachment is slight.
* 2nd principle: intention or purpose of annexation. Court concludes that the object or purpose was for the improvement of the hotel, rather than to admire the carpeting as a work of art. So degree of annexation went one way, intention went another. Intention was deciding factor.
* Object of annexation determined from circumstances, how the carpeting was used. Used for walking in the building and without it, you’d have unfinished plywood which would’ve been unsuitable for a hotel’s flooring. Carpet was also a permanent thing, to be used for however long the carpet would last. Object is determined objectively by looking at circumstances. It was done to upgrade the hotel and make it habitable. Court declared it a fixture
* Security interests in personal property/chattels are registered in Victoria in the Personal Property Registry (PPR). Here, these are hybrids, you have a chattel that is considered by the court as a fixture. These items must be registered in both LTO and PPR to be effective.

Registering Personal Property (LaSalle)

* LaSalle tried to take security over the carpets, thinking that ownership only passes once they were paid for, not when they’re affixed. But for that, would have to get purchaser to sign a Personal Property Security Agreement, then the vendor, to protect their position, registers that Agreement in Victoria in the PPR
* LaSalle failed to register. File a document in the LTO where the land is located. If LaSalle wants to protect its security and avoid common law distinction of chattel and fixture, have to file their PPSA in the Land Title Office and the Personal Property Registry, file in both places. If you do that, the carpeting remains a chattel and the common law does not kick in to convert it to a fixture and the ownership does not pass.
* To prevent chattel becoming fixtures and resulting transfer of ownership, have to conform to PPSA by filing your agreement in the PPR and because land is involved, this is a fixture, you also have to file in the Land Titles Office.
* If Chattel, register in PPR, if Fixture, register in both PPR and LTO

CMIC Mortage Investment Corp v. Rodriguez

* CMIC Mortgage was the lender to Rodriguez who wanted to start an equestrian business. She bought these two tent-like structures, Coverall 1 and 2. The coverall frame can be attached to concrete blocks buried into the ground or they could be concrete blocks sitting on the ground.
* First building she bought and paid for it, and it became a fixture, all agree. She decided to buy another one, but she did not pay for this one.
* She borrowed money on CMIC on the security of her land, and land would include fixtures. The business failed and Rodriguez goes broke so now it’s a battle between Coverall, who claims to own the second tent and detaches it and takes it, or the CMIC, who claims this second structure as part of the land.
* Structure of coverall number 2 had the concrete blocks resting on the ground and the steel frame resting on the ground of its own weight. Easily detached
* What is the purpose? Rodriguez said she wanted to be able to remove coverall #2 and take it with her, wanted it to be portable. Intention of landowner is significant factor when determining object and purpose of affixation. Looking objectively at circumstances, Coverall #2 could’ve been installed like #1, but it was installed in portable, above ground fashion, which confirms Rodriguez’s subjective intention. The objective consideration of facts and the subjective intention both confirm that this was a chattel.

Laneway Housing

* someone owns a house on a lot and take their garage and convert it into a smaller, separate house on the property, have two houses, one of which is on the lane. Can rent it out to a third person, but can you sell that laneway house to a purchaser? You can’t, because it becomes a fixture. Cannot be sold as a distinct residence.
* you could sub-divide the lot, so you have two titles and the laneway and main house would be on separate titles, and you can sell that lot with the laneway house on it. You could also create a strata/air space parcel (which of course would require an easement).
* A building remains part of the land as long as it’s fixed. You can, however, lift up a house and move it, at which point it becomes a chattel.

**Class 8**

Riparian Rights

* Riparian = rights relating to shore or bank of any body of water. Everyone who has a waterfront property, whether lake, ocean or whatever, are riparian owners. Rights of those property owners in relation to their adjacency to water.

Current Riparian rights:

* Common law-statutory “expropriation”
* Access to and from the water to their property, no one can block this access
* Protection of the property from “erosion” (building a wall on one’s property to prevent water from carrying away the soil gradually, for example)
* (maybe) acquisition by “accretion” (moving property line that moves back and forth based on land taken away or added by the tides, in summer, heat and evaporation, water level falls. Person gains property as the water level falls and loses property when it gains.) Erosion, lose property, accretion, gain property.
* Use of water of undiminished flow and quality for “domestic purposes” (subject to others’ water licenses). Domestic purpose of water is considered the highest and most important usage of water. Within the licensing system, if nobody else has a license to use that water, it’s called “unrecorded water” and it is up for grabs, for domestic uses only. Domestic purpose means the use of water for household purposes, sanitation, fire prevention, irrigation of garden not exceeding 1012 square meters, and feeding livestock.

Statutes and Riparian Rights

* Riparian is a conjunction of common law and statute, common law conferred lots of rights on riparian property owners but legislation in BC and across Canada has taken away most of
* now it’s a regime of licensing where if someone wants to make use of the water, they have to apply to the provincial government and get license.

Licenses Trump Riparian Rights

* Person diverting the water must prove that it is unrecorded. If the water is unrecorded and unlicensed and no one else has permission to use the water that the domestic use will conflict with, then you’re free to use it for domestic purposes without a license.
* Once someone gets a license to use that water, the license turns it from unrecorded use to recorded use, once they get a license, they can stop you from diverting it for domestic use.

Water Licenses

* do not pass to the purchaser of the property. They are a distinct right, a permission given by the government. Just because vendor has a license, doesn’t mean purchaser of the property gets his water license. They have to apply to provincial government for their own water license.

Property Boundary

* Common law: high watermark is the property owner’s boundary and from the foreshore down to the seabed is owned by the Crown Provincial.

.Rights of Riparian owners

* Right of access to the water (Crown can’t just build a wall and block you)
* Right of drainage (if water comes onto your property due to flooding, say, you have right to remove that water as long as you do the removal within your own boundaries.
* Right to reasonable use (now, this is only domestic use, expropriated by WA s. 2(1))
* Right to undiminished flow (if upstream owner reduces to a trickle, common law has remedies for diminishing the flow. In BC now though, flow has been expropriated by provincial government and right of flow belongs to the Crown. Right to use of water and right to flow of all water of any time is in the province, expropriated WA s.2(1))
* No riparian rights to groundwater, which is now vested in the province.
* Right to undiminished quality of water (not expropriated)
* Right of accretion
* Water that is falling through the air is owned by no one, but the moment it hits the ground, it belongs to the government.

Beds under bodies of water

* Province has expropriated water beds too and the water beds are now owned by the province.

Crown Expropriations of Riparian Rights

* Riparian rights were limited to water flowing or standing in a natural watercourse. You have banks and a stream. Water is water that is confined by banks and channels, natural water course, and standing puddle of water or groundwater were not considered to be subject to riparian rights in the same way as the water in watercourse.
* Legislature changed this to take over/expropriate other forms of water. Statute of WA now defines water to include groundwater. Defines groundwater as water below the surface of the ground. Province is the owner of groundwater.
* Percolating water is water seeping into the ground, like snow. Crown has expropriated this, now own percolating water and also own right of flow.
* while it’s in the air, the government doesn’t own the rain or the clouds, but it owns the water the moment it hits the ground.

Licenses

* defines the rights and usage of the licensee
* in many cases, they will exceed the terms of their license, like using it for a purpose not authorized by the license or they got onto the wrong creek and used it, not included in license.
* Government retains ownership and use of water except where they give permission for others to use via license, but you only get the water as detailed in the license. If you exceed the terms, it is unlicensed use and can be prosecuted under provincial water law for using water for purposes that are not licensed.

Johnson v. Anderson

* Anderson is upstream owner, diverted the flow of water. Water went through both their property, but Anderson diverted the water so Johnson got a diminished flow. Anderson used it for farm purposes. Plaintiff sought damages for the diversion of water and also a mandatory injunction to demolish the dam diverting the water and restoring it to original flow, also looking for prohibitory injunction stop Anderson from diverting it again.
* Plaintiff had no license, but was using it for domestic purposes. The defendant, however, was using it for commercial purposes and didn’t have a license either.
* Andersen actually had a license, but he exceeded terms of his license (license didn’t allow him to divert), so he was in essence an unlicensed user. His license didn’t permit the extent of the diversion that he had taken.
* Court decided this case, Johnson was the domestic user and Anderson was without a license either and using it for commercial farming. Johnson won, got damages and mandatory injunction and a perpetual injunction/prohibitory injunction. Both counted as unlicensed, but Johnson was using it for domestic purposes, which is supreme. Common law of riparian use has basically been taken away by the government in all cases except for domestic purposes.

Schillinger v. Williamson.

* Williamson did some digging, led to silt going into the water, contaminating the water and killing Schillinger’s fish hatchery downstream. He sued Williamson for interfering with the quality of his water and polluting it with his upstream gravel pit.
* Unfortunately for Schillinger, he was an unlicensed commercial user so the court threw him out. Yes Williamson polluted water, but Schillinger unlicensed user and no license to use water for fishery so he has no luck in getting a remedy.
* Defendant didn’t have a license but plaintiff’s license was limited to diverting water from Hairsine Creek and he had exceeded license by diverting water from a connecting creek as well. This meant it was unlicensed use of water.
* If it’s an unlicensed dude contaminating the water, but it’s contaminating the water of another unlicensed user downstream, the downstream guy can’t do anything other than take upstream guy to BC Supreme court for pollution. No remedy under property law. If Schillinger had had a license, he could’ve taken Williamson to task.

Steadman v. Erickson

* Stedman lived in rural area and his water was piped to his house from a small spring-fed dugout on his land. He was taking groundwater and storing it in a cistern where the groundwate. Mining operation of Erickson contaminated the groundwater and made this method of collecting water for domestic purposes unusable.
* Stedman was using it for domestic purposes so his usage was permissible without a license whereas Erickson’s contamination of the water was unlawful, so Stedman had a remedy against him even though it was unlicensed, as his use was for domestic purposes.

**Class 9**

Waterfront Ownership Boundaries

* the ownership boundary of waterfront property is the natural boundar (knee or mean-high watermark. The waterbed is now owned by the provincial government under the Land Act
* Right of access, landowners can put a floating dock out in the water, but have to get permission if you’re going to affix a dock to the waterbed.

Domestic Use

* s. 1 of Water Act: the use of water for household requirements, sanitation, fire prevention, irrigation of a garden not exceeding 1012 meters adjoining an occupied house, watering of domestic animals and livestock
* Stream has to be a natural watercourse. What about man-made water-bodies? Those are not natural, and so not a stream. It has to be created by nature, not man.

Moving Boundary Line (erosion and accretion)

* Moving Boundary Lines: subject to accretion and erosion. If it’s a fixed boundary line, it’s set regardless of accretion or erosion.
* Moving boundary, property line includes land added by accretion. If you have a fixed boundary line, than accreted land is Crown property.
* Once your property is underwater, it belongs to the Crown. S.55 prevails.
* Accretion is the gradual build-up of soil. The more water recedes the more land is exposed and hence the more land that belongs to the property owner.
* Erosion is the gradual removal of soil. It has to be gradual. Accretion must also take place by gradual and imperceptible means. Gradual and imperceptible change. Movement of tides, for instance, is not gradual or imperceptible.
* Erosion can result in one owner gaining land that was his neighbour’s land due to erosion. Gradual change that takes place over period of time. There is no compensation for erosion.
* Flooding from a giant storm or dyke breaking, etc does not create accretion or erosion, it must be a gradual flooding like a meandering river, not a calamity. Property line does not move.
* People are allowed to take steps to prevent or work against erosion, provided you get a permit to do so from the provincial government.
* Water has to form the natural boundary. Boundary must be right next to it, defined by it.
* With a subdivision, usually get straight lines, not wavy lines, which means you are subject to accretion going to the Crown and not you. You could also lose property via erosion but the line stays. Your boundary doesn’t move with the water. This also applies to bare land strata.
* Causes of this can be fluvial action, wind, precipitation/evaporation, and man-made operations (other than deliberate actions of the claimant).

Southern Centre of Theosophy v. South Australia

* Lake George comes and goes. Southern Theosophical Group built a camp there where they could brood over phenomenon.
* Court says that the boundary of the lake defines the property lines. So as the lake over the course of a season of drought gradually recedes and then disappears, the property of the surrounding owners increases. Then when the lake comes back, their property decreases.

Support

* Owner of property has the right to support of their property from their neighbours. Idea is that a property owner has not only right on surface of the ground, but also into the air as far as necessary for ordinary use and enjoyment, and also under the surface as far down as necessary for ordinary use and enjoyment.
* If someone digs under your surface, that is a trespass. This is not only trespass, but also the removal of vertical support, you are undermining the surface so that it will collapse unless steps are taken. There is strict liability on someone who goes under the soil/surface of another person’s property and causes subsidence.
* Strict liability: no proof of fault needed for depriving the other party of vertical support.

Lateral support

* Common law said land in its natural state, without buildings or any structures on it, that land is entitled to lateral support from neighbouring property owner. Strict liability for removing lateral support where you have land in its natural state.
* You are not entitled to lateral support when there is superimposed on the land the weight of a building. Putting a structure on a land adds stress/weight on the land, which in itself can cause subsidence. If you put a building on property or put some structure on it, you’ve changed natural state of the property.
* With loss of lateral support, must be shown that excavation was negligent if the land had a building on it, or that there was trespass.
* Natural causes can also cause subsidence, however. If you’re changing the weight or pressure on the land and the excavation is shown to have been done properly, no liability on excavator.
* If you can’t prove negligence and no trespass, most you can do is claim nuisance

**Class 10**

Nature of easements (2 types):

* Restrictive (negative): allows a person to restrict what someone else can do with his/her property. (eg to protect right to light)
* Positive – allows a person to enter someone else’s property to do something on or to the property (eg right of way). This could be creation of easement, like people can cross someone’s property to get to the beach.
* Running with the land. It is something that passes automatically to whoever buys the land from either party. Benefit passes from anyone who buys Smith’s lot and burden passes to whoever buys Snyder’s lot. Never has to be re-negotiated.

Easements

* dominant tenement: person who gains by the easement
* servient tenement: person who bears burden of the easement
* Cost of easement and extent of use, amount to pay neighbour, depends on how extensive the easement is. You can have a lump sum payment, method of payment is up to the parties in negotiation. To have an easement across your property, rule of thumb: loses a quarter of the value of your property, so price is probably similar.
* Easement can also be “easement in gross,” which means not tied to property, like utility easement (sewage and plumbing lines). Easements in gross are also like railways, they are not tied to railway owning property, tied to the railway. Not tied to the ownership of property, it’s tied to railways right to cross this land, not associated with a particular lot.
* Appurtement Easement is called appurtement because it benefits dominant tenement by giving him access to the road or whatever. Tenement just means property. Servient tenement is the one that must allow the easement.
* Servient tenement cannot build on easement which reduces value of servient tenement’s lot. Also can’t put trees on the easement or otherwise block it. Litigation often arises about what the servient tenement can do without affecting/blocking the easement. This will depend on the validity of the easement.
* Public rights of way are statutory rights of way that are found out from city hall or the hall where the zoning, sewer lines, etc are detailed. Private rights of way will be in the title at the land title office. Registered easements are registered under LTA and can be read at LTO.
* Whether an easement runs with the land just depends on its validity.

Modification/cancellation of easements

* PLA s. 35: Gives court power to remove or modify easements that have become more of an impediment for the property owners. Way of getting rid of easements that have outlived their usefulness
* Limitations of easements: A cannot require B to maintain quality of easement.

Gillies v. Bortoluzzi

* Neighbours were excavating and excavating, as long as they stayed on their side, worst you could claim nuisance and would have to prove negligence.
* However, they went past boundary line and kept on excavating, removing the supports of Gillies’ store, causing his store’s wall to collapse. This was a removal of lateral support out of negligence and also strict liability for trespassing and digging under the store, removing foundation stones.

Rytter v. Schimitz

* Again, negiligence in removal of lateral support and strictly liable for removal of vertical support for trespassing and digging under.
* There is no right to lateral support once there’s a building on the land, now comes downt o proving negligence.

Fundamental problems with the law of support

1. The common law right of support extends only to land in its natural state, and does not extend to buildings or other improvements (fences, etc)
2. There is no right to support by water, properties by water. If water moves back or is removed, the soil can fall away, as the water is holding the soil in place....yet the neighbour is under no obligation to keep the water there. License can be given to neighbour to divert water, even if it causes neighbour’s land to fall or house to collapse.
3. The defendant is strictly liable in nuisance without proof of negligence, which offends against the common notion that liability should be fault-based, and is out of step with the modern law of negligence.
4. It is anomalous that the rights of the victim differ according to the nature of improvements on his or her land.

**Class 11**

The Cadastral Concept

* involves our system of dividing land into individual parcels, of individual ownership. When we talk about ownership of land, we talk about “title.” Each parcel of land can be plotted physically or geographically on the surface of the Earth and for each parcel of land there is a related title.
* Land use is primarily a matter of local government and not much of land use is on title

Land Titles System

* registration of title and other interests. Land ownership is a matter of public record and to find out who owns a property, one can search the register of titles.
* Fee simple/freehold: landowner has a freehold, highest kind of land ownership possible in our system of law. Freehold owner has the entitlement to that property, infinitely. That owner can register their title and then their name will appear on the title document as the registered owner of the fee simple. All lesser interests in the property are registered as “charges.”
* Registration of your title is not required. Most people do want to register, however. Province grants indefeasibility upon fee simple owners if they register.
* Indefeasible title, the fee simple, comes from the province upon transfer, not from vendor.
* Charges can be registered in BC, but registration doesn’t give indefeasibility to them, but it gives a “construction of notice” of lesser interest. Most of these lesser owners would thus register if they want to protect themselves, gives notice to anyone dealing with that title that this charge exists on this property.

Life estate

* possession for life. Own property for person’s lifetime. Every parcel has a fee simple owner but created out of that may be a life estate.
* Someone may have entitlement of possession during their lifetime and then when they die, their interest terminates and the right of possession comes to an end and full fee simple reverts or goes back to the fee simple owner. Right of reversion. Possible to have an estate for someone else’s lifetime.
* If the owner doesn’t want right of reversion, instead of leaving the consequences of the death of the life estate holder blank, can specify where or to whom the property is to go upon the death. “To A for life, remainder to B.”
* A is the life tenant and B is the remainderman. A has the right to income, possession during A’s life time. B has right to corpus or capital on A’s death. Gets the remainder, what is left over after A dies.
* If B dies before A, the property will carry on and when A dies, the remainder would go to whoever was entitled to B’s estate upon B’s death.
* A can sell their interest, the life estate is saleable, but who wants to take a chance on how long A is going to live? B can also sell their interest in expectancy.
* Estate Pur Autre Vie “to A for B’s life,” life estate to possessor for duration of someone else’s life. If A dies before B: life estate continues, goes to whoever is entitled to A’s estate

Crown Grant

* Crown grant is the start of private ownership of a property and as time went by, property was sub-divided and sub-divided into smaller and smaller parcels, all registered in title office, but you can go back and see original granting of my title.
* If I die without a will and have no heirs to inherit my property, it goes back to the provincial government.
* Ownership of abandoned property also goes back to the Crown.
* Leasehold is possession for a limited duration. Tenancy is exclusive possession for term of the least.
* Technically, no one owns land, only an interest in land. Crown has full ownership of the land, and they grant to us an interest in it (a fee simple or a leasehold).
* These are possessory rights, fee simple owner has possession forever, life estate for a lifetime, leasehold for a shorter period, or at least one that’s defined.

Co-Ownership (Tenant in Common or Joint Ownership)

* Tenant in common: title says “me and x,” we are co-owners, we share the property equally or whatever proportion is the arrangement. We each have separate, inheritable interests in that property and the portion of the property passes on in our wills or intestate
* joint tenancy or jointure carries with it the right of survivorship. Property is registered under me and x in joint tenancy, Surviving tenant automatically gets property of the other person upon that person’s death. Joint tenants cannot leave property on their will, their right is gone after lifetime, passes to joint tenant. When the last joint tenant dies, then that person, as the sole owner, can pass that property on through their will or intestate.
* If you want joint ownership, it must explicitly say so on the title. If it just says “me and x,” that will be treated as tenancy in common.

Equitable Interests in Land

* usually done through a trust. Someone will have a will where they have trust where the property is left to the trustees to hold for the benefit of the equitable life tenant, usually the surviving spouse of the deceased and on the death of that spouse, the property will pass to the children of the marriage, and they get the property on the death of the equitable life tenant. Children of the marriage hold equitable remainder. Spouse dies, vest in children, who take possession at that point.
* In the case of trust, the title would show the trust. Title would be under x (in trust), document number (in trust, see document #). This document referred to would show the details of the trust, that would be in the Land Title Office.
* If title just says Tony Shephard, it’s a fee simple, if it says Tony Shephard in Trust, it means holding for someone else

Dispositions of Property

* For sale of land or building, it’s done by transfer. Chattels are by bill of sale.
* You can also gift land or chattels. Give the land by a transfer but say there’s “no consideration.” A gift is a transfer of property wherein the donor gets nothing back from the recipient. A sale requires consideration
* Property passes on death. Fee simple goes on infinitely, but the individual owning the property or having fee simple, their interest will end when die and it will pass to somebody else. They can designate who by use of a will.
* If they die without a will, that is called intestacy. Statutory scheme for dealing with this involves determining the next of kin, the nearest surviving relative to the deceased will take the property.
* Jointure (survivorship) is another possibility, on my death the property passes to surviving joint tenant. If we die simultaneously or sequence of death cannot be determined, the older person is assumed to die first and so it passes under the younger person’s will.

Limits on use of land
a) Common law of nuisance. Neighbour is entitled to quiet enjoyment of their property.
b) Private arrangements (contracts) – private agreement between A and B regarding B’s use of the property, this can involve easements and restrictive covenants.
c) Legislation. Legislative controls on land use, things like Agricultural Land Commission Act. Prevent urban sprawl at expense of farmland. Agricultural land reserves, registered on the title, means land is preserved for agricultural purposes. Lots must be kept a certain size and land is to be used for agricultural or similar purposes, not subject to urban sprawl or residential development
d) Municipal zoning. Determines what can be built where, zones.

**Class 12**

Corporeal interests in land

* Corporeal interest = right to possession
* There are two types: freehold (indefinite duration) and the leasehold (a limited exclusive occupation of the property).
* Freehold is indefinite, either of infinite duration (fee simple) or for a life somebody (life estate). Estate pur autre vie is a type of life estate, where the lease is for the length of someone ELSE’s life, life estate is for the life of the person with possession of the property, freehold because no set date, don’t know when someone will die.
* This can be immediate or for future interests. I have possession from the time of the lease coming into effect or at the time the transaction is completed and take possession.

Incorporeal interest

* no right to possession (though there can be some overlap, may have very limited right of possession to cross the property in that for a while, he’s occupying it, but law sees it more like a right of way), right to use or control
* easements are one, it creates an interest in someone else’s property but the interest cannot amount to possession of that property, it must be short of possession.
* These interests can be registered on the title to protect them, though statutory interests don’t have to be as they receive protection outside of Land Title Act.
* A mortgage is another common type of non-possessory or incorporeal interest. Mortgage is a collateral security for the payment of a loan.
* While the mortgage is in good standing, the mortgagee’s interest is a non-possessory interest, just in the payments. If mortgagor can’t meet mortgage payments, THEN mortgagee gets to exercise right of foreclosure, take possession of property and sell it.

**Class 13**

Leasehold Estate

* Lessor (landlord) and lessee (tenant).
* Tenant gets exclusive possession, pays rent to the landlord or has to provide services to the landlord. It’s for a fixed duration.

Future interests (Life Estates and Remainders)

* Somebody could leave property, say by a will or gift of property, to “A for life and then to B in fee simple.” This means that A immediately gets a life estate in the property and B immediately gets a remainder interest in the property. B on A’s death thus gets possession and A will drop out of the picture on A’s death, no interest in property that he can dispose of by his will.
* A would be entitled to get the rents off of the land during his lifetime. On A’s death, pass into possession to B. B has an interest that will come in by way of a possessory interest at some point, depending on when A dies. Future interest, because possession deferred until A’s death.
* B has a possessory interest, and can sell that interest as a remainder
* Remainder: vested in interest upon the death of the testate if it’s a will or upon the gift of the donor.

Conditional interest

* B does not get a vested interest, “To A for life and then to C if C graduates from law school.”
* C’s interest is not vested, it is conditional or contingent upon C graduating from law school before A dies. It is subject to a condition precedent.
* This is a “condition future interest.” C has nothing of value at the moment, just an expectancy that if C graduates before A dies, he will get the remainder. But if A dies first, than C gets nothing. This is not vested in interest. It is known as a contingent.

Legal and equitable interests

* Common law = legal title, the holder of the legal title to property. It has the remedy of damages.
* In equity, we talk about equitable interests in property. Equitable remedies include specific performance, injunctions, and equitable damages.
* Possible to simultaneously have forms of ownership in a property. One person may have common law interest, another may have equitable interests. This latter would be a beneficiary of a trust, the legal title holder would be the trustee.

Trusts

* The trust for today involves the property owner, called the settlor (inter vivos) or testator in case of will, who transfers or disposes of the property to the trustee, who holds that property for the benefit of the beneficiary.
* Modern trust: “to A in trust for B” with A as the trustee and B as the beneficiary.
* The trustee has the legal title to the property. When the settlor owns the property, the settlor has the full ownership and the fee simple. When they transfer it to the trustee in trust, settlor splits the full ownership into two distinct interests. There is the legal title, held by the trustee, and the benefit, which goes to the beneficiary.
* Beneficiary is meant to enjoy, gets a benefit, while the trustee does the work. Legal interest goes to the trustee, equitable interest goes to the beneficiary
* You want someone to have benefit of the land, but say they’re too immature or something, so don’t want to give it outright to B, don’t trust him
* Trustee receives property and they have the legal title to it, but they have it in a negative way. They don’t have it for their value and enjoyment, they owe fiduciary duties and must put beneficiary ahead of themselves and are to administrate it for their benefit.
* If the trustee goes bankrupt, doesn’t matter to beneficiary. Creditors of trustee cannot take property, as it is held in trust for beneficiary. Cannot take beneficiary’s interest to settle trustee’s debts. If trustee goes bankrupt, the title goes to the receiver, the guy who would take trustee’s assets, and that receiver must administer it for the beneficiary. Receivor/trustee in bankruptcy is a third party, an accounting firm, that the bankrupt or otherwise failed trustee would hire/appoint to take care of and administrate the property for the beneficiary.
* If, however, the beneficiary is in debt, creditors can go after your equitable interests in land

Trust Remedies

* Beneficiary has rights of enforcement against the trustee. Enforcement of the trust is a matter of the relationship between the beneficiary and the trustee. Settlor does not enforce the trust, it is between beneficiary and trustee, settlor is out of picture
* All kinds of remedies require the trustee to account, show expenses, explain where money went, put back money that was misappropriated, breach of trust, etc. Can punish by contempt if beneficiary violates any fiduciary duties or duties of loyalty.

**Class 14**

* Equity is corrective of the common law, makes decisions where the common law result was somehow unjust. Corrects common law injustice.

Cestui que trust

* Trustee has legal title and owes fiduciary duties to beneficiary. But the trustee holding the legal title can sell the property to a third person.
* Cestui que trust: trustee can transfer legal title to a third party, can sell the property to a third person. Equity, concerned about conscience of the third person, applied test of good conscience here. Against good conscience for the original trustee not to honor it, to ignore the obligations they gained on receiving property. Court applied same test to third party when they acquired land to third party. If this person’s conscience is affected, then beneficiary can enforce the trust against third party.
* Third party who is a volunteer (received property without paying for it, gift from the trustee) then the third person got something for nothing and court of chancery said obligation of trust applied. Could not refuse to recognize trust upon becoming aware of it, beneficiary could enforce if it was a volunteer even if they didn’t know, as they got the property for nothing.
* If the third party paid for the property, everything depends on state of third party’s knowledge at the time of the transfer.
* Doctrine of notice: If the third person bought the property, knowing at time they bought it that it was trust property, they were subject to the trust. Because they knew about it when they bought it and hence probably got it really cheap by saying that they’d honour the trust and abide by it. Not ethical for person who got property knowing about trust to deny it
* If neither of these things are the case, third person is called “bona fide purchaser for value without notice.” Person takes free without trust. Beneficial interest in property is vulnerable to breach of trust by the trustee if the trustee sells property to an innocent buyer.

Buying Stolen Goods

* even if you’re an innocent purchasers, regardless of the dodgy circumstances, the fact is that at law, in relation to legal title “no one can give that which one does not have.” Guy selling stolen watches has no legal title to them, which is with the owners of the watch. He’s gotten them by theft or fraud so has no valid title to them.
* So when he sells to innocent purchaser, purchaser doesn’t get the title to that lot. Not like bona fide purchaser of land, who would get the title. Stolen watch seller only has possession, no title, so innocent purchaser doesn’t get a title, no title passes with stolen property.
* “First in time first in right,” first in time is original owner, and first in right means original owner ranks ahead of the innocent purchaser of stolen property. The legal title belonged to someone else, would have to give the item/property back. The true owner could always recover property from the transferee and not relevant that the latter is aware of the issues.

Doctrine of notice

* uses reasonable person test. If reasonable person would know, or done the investigation/inquiry reasonable person would have done.
* Puts upon person buying property a duty of inquiry in a suspicious looking deal. Even if you don’t make the inquiry, you are deemed to have had the knowledge that that inquiry would have yielded.

Breach of trust

* If found, have to determine if it’s innocent purchaser. If yes, he can get legal title free of equitable interest. Conscience is clear because had no notice of beneficiary interest.In equitable, beneficiary takes the hit and the innocent purchaser gets title.
* Although trustee didn’t have beneficial interest to sell, only legal title, equity say not fair to take property away from innocent purchaser, they bought without knowing about the trust. Innocent purchaser gets the legal title free of the trust.
* If land is transferred to innocent purchaser, beneficiary’s interest in the land vanishes. He can hold the trustee liable for this loss, go for damages.
* Equitable maxims: “where the equities are equal, the law prevails.” Where both the beneficiary and the innocent purchaser are equally harmed, the innocent purchaser, the holder of the legal title, wins.
* Court can say the purchaser is not as innocent as the victim, although they are quite honourable, they are not completely honourable, the circumstances are a bit suspicious or there’s a simple step of inquiry purchaser could’ve taken. Then equitable interests aren’t equal, favour the benefiricary. Equity is always discretionary.

**Class 15**

Freedom of disposition

* holder of a fee simple or other interest has right to transfer to anyone and right to set terms of transfer

Statutory Restraints on Freedom of Alienation/Disposition

* In BC, there are statutes that impose restraints on alienation. The Land (Wife Protection) Act by which lawfully married wives can file a notice in the LTO on the title claiming the property as a homestead. Can be any type of lot, matrimonial home. This means that even though title is in name of husband, the property can’t be sold by the husband without consent of the wife.
* Willis Variation Act. This is a statutory scheme whereby a spouse or a child of the marriage if they are disinherited, they can make a claim under the wills variation act. They must start their proceeding within 6 months and can make a claim against estate for being wrongfully disinherited by the father or the mother or the spouse and make a claim against that estate for a share out of the estate.
* It gives the court authority to overrulee the testator’s will and redistribute the testator’s estate in favour of the spouse or the child who would have a moral claim on the estate
* Family Relations Act: if a couple have a marital breakdown, property of the two parties is subject to assets being claimed as family assets or assets of the marriage. If the title is in one spouse name, then the other spouse can make a filing under the Land Title Act making a claim against this asset under spouse’s name as being a family asset. Other spouse cannot sell that property now that it’s tied up in this provision of family asset litigation

Torrens system

* ‘title by registration’. Under this system, when we acquire an interest in property, we file it on the register.
* For the fee simple holder in BC, the title is guaranteed by the province. Under Torrens system in BC, the fee simple holder is assured of a title and anybody who searches that title has the assurance that the titleholder who is on the title as the fee simple holder has a valid title, according to this scheme. Nothing else is guaranteed, only the fee simple.
* Purchaser pays the vendor, completion/closing, then the purchaser applies for registration, goes to LTO, gets certificate of indefeasible title from LTO upon registration (guarantee by province, no one can come along and say vendor couldn’t sell you the property), and it is in the name of the purchaser.
* Registration of title: registered instruments have priority over unregistered instruments and subsequent registered instruments assuming they were validly registered.
* Title is determined by the register. Do not get title from the vendor, you actually get it from the government, the province. Coming from province, guaranteed to be a valid title.
* Previous dealings with the land are irrelevant. If that person is on the register as the fee simple owner, that is golden, you can buy property from that person without any fear of someone in the past showing up to question the title.

Torrens system has 3 principles:

1. Mirror principle: Register accurately reflects the title. Certificate accurately reflects all the charges you have to worry about, has to be on the title. There are issues, however, if someone knows about something that is not on the register, this is notice of unregistered interest.
2. Curtain principle: all necessary information is on the certificate of title, don’t have to look behind it. Don’t have to look around for unregistered instruments or interests you’re not aware of. Just proceed with what’s on the title.
3. Insurance principle: the province stands behind this system. Title office is in hands of crown corporation, crown guarantees title and compensation will be given to anyone victim of fraud or mistake by land title office staff, but this compensation only goes to fee simple holder.

Ownership of chattels and goods

* can be in sole ownership or co-ownership. This is common with a bank account, can have a joint account, just like you can own land as a tenant in common or joint tenant
* Can have trust relationship where trustee holds property in benefit of the beneficiary. They manage the property for beneficiary. Common for stock shares/investments.
* You can use personal property as collateral security for loan in same way you can use land, whereby there’s a charge registered on the title of the car and available for searching in the Personal Property Security Registry. Can also pledge tangible chattels as collateral security for loan from a pawnbroker, where you can eventually pay back to get your stuff back, or if you don’t, he can sell them.
* You can have a life estate in personal property. A legal life estate: give something to somebody for their life and at the end of their lifetime, it reverts to my estate. Or I can have life estate with a remainder, go to A for life and on his death, it will pass to B
* successive interests in personal chattels can now be created by will (can’t be created inter vivos, only in will) with the imposition of trustees.
* The life tenant, if not in trust, only has life estate in the property, but they have absolute ownership, so can pass good title to a purchaser and destroy the remainder interest. The life tenant can pass full ownership of chattels to a purchaser. Remainder is not a vested interest as it would be in land, it’s contingent on life tenant not selling everything. Remainder will get nothing unless life tenant doesn’t sell it.
* Life tenant is under fiduciary duty to hold onto the property, but if they don’t, they dispose of full interest in property to the purchaser and remainder can only go after the life tenant for breach of fiduciary duty. Remainder, however, can’t go after purchaser to get the property.

**Class 16**

Ways to acquire land:

* Crown grant – Grantee can sell the property to subsequent purchasers, but before doing so, the original grantee, the person who gets it from the Crown, is required by law to register the title to that land in the Torrens system (apply to LTO, who surveys the area, and get themselves registered as holder of fee simple). Then they are in position to pass title to someone else, who can take the title by purchase.
* Can also transfer property by will, intestate if passes without a will.

Legal incapacity.

* There are people disqualified from transferring or acquiring property. Everyone can do it inter vivos or on death except minors. Minors in BC are those under 19.
* Testmentary capacity (capacity to make a will), you have to be 16 years of age or older to make a will that’s valid. A minor, today, under old act, can’t make a will. But under new statute, when you reach 16, you can make a will.
* People who get too old and senile, mental disability, head injury, etc, may be deemed incapable of having the mental ability to make a will. If there’s a will in existence prior to the person becoming incapable, that will is valid because it’s the time of making the will that mental capacity matters.
* A will is void if a maker is incapable at the time the will is made. Requires degree of mental capability to understand what they’re doing in their will and making decisions. If they lack mental disability, can’t make a gift either, can’t make transfer inter vivos or purchase/sell land.
* If lack capacity, need to appoint someone to act on their behalf and make these decisions and transactions on their behalf, get a substitute decision-maker, called a committee. Court can appoint a committee of the estate to handle their transactions involving real estate and other assets, as well as medical decisions.

Making a Will

* practice is to have two witnesses present when the person signs the will. Testator signs first, then the witnesses, and all three in the presence of each other. To make a valid execution of a will, you have to be 16 and witnesses are supposed to be 14 years old or over at the time of testifying. Child under 14 is incompetent to testify unless special procedure demonstrating their ability to understand what’s going on.

Power of Attorney

* statute that enables a person to appoint an agent to act on their behalf through a document that says “I appoint.” People may make an appointment of someone under power of attorney to act for them while they are unable to attend to their own affairs. The donnee of the power can attend to financial and legal affairs of the person.
* When the donor became mentally disabled, the power of attorney ceases to be effective, requires the donor to have mental capacity ALL THE WAY THROUGH. If the donee was acting but donor didn’t have mental capacity, then the donee’s actions are ineffective.
* A person can appoint an enduring agent, an enduring power of attorney, must expressly say so. Then the person who is appointed as the donee will continue to have agency even though the donor, now due to lack of mental capacity, lost the authority/ability to appoint agents

Living will

* Made under Representation Agreement Act so that a person who is incapacitated, prior to their incapacitation, can make a living will regarding their medical treatment during their terminal illness, what is to be done for them during their decline.
* In the absence of living will, the family members have to make decisions for the person who is incapacitated.

Issue of gifting and attacking the gift

* If an elderly gentlemen bypasses the expected beneficiaries, skips over them for someone else. These people have rights to apply.
* They can attack a gift by will through the Wills Variation Act but not an inter vivos gift. If gift given inter vivos, they will generally be going after the guy’s mental capacity.

Crown Grant, exceptions and reservations

* the starting point where property initially begins, crown by grants gives ownership to individuals, companies, etc who purchase the property from the Crown. Crown still retains absolute ownership of the property and gives the grantee a period of time in the land.
* Crown might create a lease for a period of time for the tenant to do something on the land. If that facility ends, then it reverts to the Crown
* Land Act nonetheless always governs dealings in Crown land, statute under which crown land is administered.
* Grant from the Crown has owner’s name (grantee’s name, in other words) on it. Also has a legal description to the property, containing a description of the surface area and exceptions and reservations and a surveyor’s map. Exceptions are things the Crown has retained title to.
* Reservations: Rights of the Crown retained, less than title, but rights retained by the Crown.
* Exceptions and reservations pass from the original grantee to each successive purchaser. When someone gets a title today, title says right on it “subject to the reservations and exceptions.”
* When grantee registers their title, bring the Crown Grant and map to LTO, that’s examined by the staff there, when they get their title, that is called “bringing land under the Torrens system.”
* Before issuing a grant, the exact status of the land must be determined to ensure no conflicts, and legal survey must be conducted. Crown grant then forms root of title on which the torrens system operates, which kicks in when the land is registered in the LTO.

Crown Right of Resumption

* Crown has given title to the land to the grantee and the grantee or any subsequent purchaser has title to the entire surface area, but the Crown reserves the right to take back from the purchaser of the grant up to 1/20th of the land deemed necessary for public works (roads, canals, etc) WITHOUT giving compensation. Crown can also take back vacant land, not where there’s a building or improvement on it (a garden), must be in natural state.
* Subsurface minerals are retained by the Crown. The Crown also reserves the right to remove sand, timber, gravel, etc for public works without compensation.
* Crown grant: no right, title, or interest in any geothermal resources, coals, gas, mineral, petroleum, or anything else that be found under the land like this. Crown excepts these items from your grant, they retain ownership. These run with the land. These are always exceptions.
* Reservation from the grant; unless the Crown exercises it, the gravel belongs to the surface holder. Surface holder can start selling it to people, etc, treating it as theirs, but it’s always open to the government to come in and declare it theirs, right of resumption. But it belongs to the surface owner unless/until the government shows up and claims it.
* Agricultural and timber rights belong to the surface owner, but timber rights can be taken by the Crown if they needed for some public purpose

Inter Vivos transfer of property

* this may be and often is preceded by a contract under which a vendor agrees to transfer an interest in land to a purchaser.
* if there’s a sale of property, the vendor is the person who has the registered ownership of the property and the purchaser is the one who pays the consideration to buy the title to the property from the vendor, so there’s an agreement/contract made and that contract will specify a date of completion.
* Purchaser initially pays a deposit (guarantee of the purchaser’s performance) to the vendor, a small % of purchase price. If purchase does not complete the transaction, doesn’t go to transaction stage, then deposit is forfeited to the vendor.
* Start off with a “contract of purchase and sale” which specifies the date on which the purchaser needs to have a balance of the purchase price and vendor gives title.
* Completion – transfer documents are signed and purchase money goes vendor and purchaser goes to the LTO to register on title.
* Contracts relating to interests in land and gifts in land MUST be in writing and are to be signed by the party to be charged. Signed by both parties. Signed by the purchaser, and if offer is accepted, signed by the vendor, then you have binding contract.

**Class 17**

Inter Vivos Transfer

* If there’s a gift of property, there’s no contract, there’s no agreement, it simply goes straight to the transfer, which is the Form A. If it’s made voluntarily, no consideration passing from the donee to the donor. Transaction can be registered in LTO and both purchaser and donee can be registered as legal owners of this property by completing Form A and submitting it to LTO

Interim Agreement

* Subject to rules of contract and contracts relating to land MUST be in writing and signed by the person against whom you’re trying to enforce the contract or that person’s agent.
* Rather than having full contract laid out, with all the different terms and common law requirement of certainty of terms, this statute says that there has to be an indication that the contract has been made and a reasonable indication of the subject matter. So all you have to do is having something in writing, signed by the party being charged or their agent, and what is in writing doesn’t have to be the full and complete contract, just a reasonable indication that there is a contract. That is sufficient in BC to make a binding agreement of purchase and sale
* You make the contract, it then specifies when there will be a completion or “closing” of the deal. Contract can say we’ll “close” a month later and at this point, purchaser must come up with payment of balance of the purchase price and the deposit. Vendor must have a clear title to transfer to the purchaser.
* Before the deal goes through, before the money leaves my lawyer/notary, insist vendor must have clear title. Establish state of the title online, search land title survey authority to see if there are any problems with it or charges on it and if title is clear, pay balance of purchase price.

Completion

* After this, make Application to register: I file the transfer form A, at LTO. If there’s a mortgage, that’s form B. Registration of the transfer, and then i will be notified in due course that I have acquired title to this property and when I get onto register as holder of the fee simple, I have a title that is guaranteed by province. But until I get onto register, I have an unregistered interest.
* Can have a problem: between the signing of the agreement of purchase and sale and the completion, rise and fall of market in that interim period. If the market suddenly goes up, the purchase price will be based on what fair market value was at the time of signing contract. Vendor’s remorse. Vendor will try to back out of the deal and refuse to complete in hope that they can sell to someone else at current market value and get a better price.
* When trying to back out of deal, depends on if they had a valid contract for interim agreement, signed by the defendant who’s now trying to sue to back out, or their agent.

The Deposit

* A deposit is a guarantee of performance. The purchaser is saying will come up with the balance by the date we agreed on if vendor produce clear title, an immediate sum of money paid right away to the vendor upon signing the agreement, as soon as vendor signs, deposit is taken from purchaser by vendor’s agent and held in a trust account for completion of the deal. Money that can be forfeit to the vendor the purchaser does not complete.
* Purchaser can provide own agreement with own term to protect himself a bit, use clause “if buyer does not complete, the deposit shall be forfeited as liquidated damages as the seller’s sole remedy.” Otherwise, vendor can keep the deposit and if he suffers greater losses than the amount of the deposit (like if real estate market declines in this interim), vendor can sue for all.
* If purchaser can’t pay due to inability to get financing/mortgage, can get deposit back if you stipulated that you’d pay “subject to obtaining financing.” Subject to clause

Things to have on a sale agreement

* Seller must provide clear title at closing,
* Completion date, or “closing date,” date is usually “time is of the essence.” If the purchaser doesn’t come up with the rest of the money by the closing date, the vendor is entitled to walk away. Vendor can waive this date and extend the time if they wish.
* Costs: purchaser will pay the registration fee for registering documents in LTO, purchaser will pay licensee/agent’s commission for arranging the presentation and advising, and the vendor will pay their licensee’s commission and pay any cost for clearing title
* Possession Date: when purchaser takes possession, vendor no longer has access
* Adjustments: vendor and purchaser produce statements of adjustments, these are like the budget for the transaction,s et out details for where the money will go, what the purchaser will give to vendor, where money goes. Some may go to vendor, some may go to discharge of mortgage, etc. Statement of adjustments figures out where the money goes and how much goes to vendor as proceeds of sale.
* Risk: completion date = vendor no longer facing risk of destruction of property. Purchaser needs to have insurance from the moment, 12:01 am, of the completion date. In the gap between completion date and possession date, purchaser is responsible for the insurance.
* Included items: fixtures/chattels Purchase price includes fixtures, chattels that are included. Vendor can stipulate to exclude various fixtures, or to include various chattels.

Assignable

* purchaser can assign the contract. Assignment of pre-sale contracts. Purchaser can assign the agreement so purchase occurs before the completion date and often before a building is built

Parol Evidence Rule

* any other representations that don’t appear in the agreement are merged in the agreement and do not have any other effect. There are no representations other than those set out in this contract.

Seller’s signature/residency

* offer is presented, signed by buyer, without the vendor’s signature, and if vendor likes the offer, vendor will sign, and the seller must indicate their place of residence for income tax purposes.. If they’re non-resident, CRA impose obligation on purchaser to ensure that taxes is collected before the sale completes. If resident, CRA will take care of it.
* If inter vivos, only has to be signed by the donor, not the donee.

Proprietary Estoppel

* if the purchaser pays the sum of money to the vendor and they have an oral contract that payment of cash would be an act that would make the agreement binding, even though not in writing and signed by the party to be charged. If another party, the vendor, acquiesces in an act of the purchaser (like let’s purchaser brings his stuff on vendor’s property) that also works. Creates proprietary estoppels. If there’s an act or encouragement/acquiescence of an act, it is consistent with existence of this agreement, alternative method of proof of a contract that substitutes for the signature and writing otherwise required. BC is unique in this, having “part-performance” of a contract be binding deal.
* where there’s been reliance on existence of a contract that gives estoppels, other party is stopped from denying existence of contract even if it doesn’t exist in writing or isn’t sign. Oral contract is thus enforceable in BC.
* Can be damages in restitution or compensation or specific performance if the agreement has been reneged on, these three remedies. Can still get that money from the reneging party even if he has since given the property to another party.

Short Term Lease (3 yrs or less)

* need not be in writing nor does it have to be signed by the tenant or landlord. Can be oral.
* These leases do not have to be registered to be enforceable against third persons

Seals

* statutory provisions that dispense for the need for sealing to simplify the process.

**Class 18**

Doctrine of Part Performance

* if the parties have partly performed an oral contract, then the court could order its enforcement, even if its only oral and not signed.
* Another option would be to have acquiescence. Or estoppels, if the person is estopped, make some oral attestation or claim that there is a contract and the other person relies on this.
* Equitable maxim: “equity will not allow a statute to be used as an instrument of fraud.”

Seals in Equity/Property

* Gratuitous promises are binding in common law without consideration if under seal. Equity does not take this view, equity looks to the intent and not the form. Seal is not binding. Nominal considerations, like “natural love and affection,” are also not binding, not consideration.

Registrable forms

* Parties who sign an interim agreement do not register that document in the LTO. Appendix A is not registered and remains a private document of the parties.
* What IS registered is Form A and Form B, these are registrable instruments of a conveyance. Parties make their private document of purchase and sale, which they keep, and hopefully will abide by that and when it comes to completion, parties will provide the Form A (the transfer of the fee simple to the purchaser) and Form B (the mortgage), registrable
* Vendor is supposed to prepare Form A but usually the purchaser and his lawyer who prepares draft of form A and the vendor just signs it.
* If you have oral lease, no documentation to submit to LTO, so no need to submit any documentation of short-term lease. A landlord or intended landlord makes a lease, if you have a long-term lease (>3yrs) then landlord is supposed to give tenant a registerable form of lease, unless there is a contrary term in the lease that the lease is not to be registerable
* If lease is < 3 yrs, there’s no obligation for the tenant to get a lease or for the landlord to provide one in writing, nothing to register. No registration of short-term leases. Long-term leases are supposed to be on the registry, but they usually aren’t.
* LTO staff can accept equivalents of form A and form B, but there’s not obligated to
* A person who transfers land or who makes an agreement for the sale of land must register his or her own title in order that the person to whom the land will pass can register theirs.

When is transfer operative?

* Torrens idea is that nothing would be effective unless and until it got on the register. No interests in land were created unless they were registered on the title. If you have an unregistered interest, can apply for registration, but until then, have nothing.
* Granny in the Attic will not have registerable instrument and will keep going on oral lease, exception to requirement of registration, granny has a legal interest despite not being registerd.

Equitable Interests Outside Torrens

* you can be on register and have legal title, or you can not be on title and have an interest in equity. Courts thus overruled the legislature, which said that an instrument, until its registered, has no effect in law or in equity. Court says it does have an effect in equity.
* Until registered...effective in equity to the extent that equity can empower it.

**Class 19**

Process of transfer

1. Execution: when the document is signed and transfer closes.
2. Application to Register: Fill a transfer form, which goes to LTO
3. Registration: Application is vetted by LTO staff and if it’s valid and they accept it, it is registered. Registration gives indefeasible title to the fee simple holder.

Equitable Exception to Registration of Transfer

* it is effective against the person who signed it even though it isn’t registered. That person is bound by their own act of signing the document, as it would be fraud for that person to say that while they did sign it, it’s not effective since you didn’t register it. Against the person making it, the document takes effect upon execution, not registration.
* When you have execution or completion (purchaser has paid purchase price, signed transfer documents) in that interim period, if purchaser doesn’t apply for registration, the registered owner retains legal titley, but the purchaser has a title in equity.

At common law, a valid inter vivos gift required:
 1) intention to donate (immediate not on death)
2)sufficient act of delivery to the donee
3)acceptance by the donee
4) If it’s a gift of land, donor must give donee a registrable form of transfer (completed form A)
5) Donee applies and receives registration. Brings gift to completion.

Donative intention

* Their intention is to make an immediate gift. Otherwise not valid.
* cannot make a gift on death (this would require a will).
* It is possible to say “I give you my house right now, but you can’t take possession of it until I die.” An immediate vesting of interest, but possession would be postponed.
* Court looks at the donee’s conduct to ascertain intent.
* Donee can always refuse a gift, which would prevent the gift from taking effect.

Failed Gifts

* Legal outcome: If the donor passes away before all these 5 steps are completed, it goes back to the estate of the donor.
* Equitable outcome: look to the intent of the donor and in some situations will try to salvage the gift if it would help the donor.
* Equity will not assist the volunteer, doesn’t care about the recipient of the gift, but would be anxious if the intent to make the gift was there and can enforce the gift even if certain formal steps aren’t taken. Depends on proof of the donor’s intention.

Personalty Gifts

* delivery is important.
* But donor may have a mental reservation, if it can be proven (subjective), that donor went through steps of form without the intention means that the gift fails.

Right of revocation

* if retained by donor, that is not a valid gift. It must be irrevocable to be a valid gift and the interest in the property must be vested in the donee immediately.

Ross v. Ross

* Lynds: her intention was to make gift to her grandson, Donald Ross, and his mother opposes the gift to her son. Daughter expected her mother to leave property her, but instead, it was left to her grandchild. So mother attacked the gift to her own son, saying property should go to her.
* If the gift failed, the gift from the passed away Mrs. Lynds, would go as part of her estate and the daughter would be entitled had it passed as part of her estate, but if the inter vivos gift was valid, would go to son.
* Mrs. Lynd signed the documentation and paperwork, Lynds said she’d register it herself, but just kept it in her purse until death
* The form is not present here; there was no delivery from Lynds to her grandson. There’s was a signed document, but grandson didn’t know about this and was never even told that he’d get it.
* Court looks at donor’s subjective state of mind: Lynds was very fond of her grandson and wished to gift property to him. Court gets this from credible witnesses
* Deed of transfer, at the end of document it says “signed sealed and delivered in presence of \_”. This document was signed and it was in effect an execution of a deed of conveyance, but there was not strict physical delivery, which would mean handing over the deed to Mr. Ross. So at common law, it’s a failed gift, but equity steps in and looks at intent, not at the form, and because of clear intention of Mrs. Lynds, the form was overlooked and court held this was valid
* Can’t have a period of time where nobody owns the fee simple. Someone must always have it. Fee simple vested in interest in Mr. Ross, but his possession was postponed until Mrs. Lynds passed away and in that intermediary period she was the life tenant and he remainderman.

Zwicker v. Dorey

* old man marries younger woman in Zwicker, he makes a will and puts his land in joint ownership with her. In his earlier days, Mr. Zwicker had made a deed of gift, giving that same land to Dorey, but deed contained following clause: it’s not to be recorded until my passing away.
* This is testamentary intention, but not executed in form of a will.
* He also sold some of this property he’d put in this deed of gift to Mr. Dorey. He’s dealing with the property in contradictory ways. Gifts it to Dorey, but then starts disposing it like it’s still his own property. It’s not an intention to make an immediate gift.
* Just a year before his death, put it in joint tenancy with Mrs. Zwicker suggested he was retaining ownership and power to deal with his property throughout his lifetime, which contradicts the idea that he made an immediate gift to Dorey
* this gift must be a will, require compliance with the wills act. Zwicker’s signing of deed of gift did not comply with form of a will.

Gift in Estro

* Conditional gift. But in Zwicker, Court says you can’t have the condition being the owner’s death, as that’s testamentary again, needs to be a will.

**Class 20**

Wills

* A will does not speak until death
* a will remains revocable throughout the testator’s lifetime and beneficiaries under a will get no interest whatsoever in testator’s property until he’s dead, because a will can be changed, revoked, or tossed out for an entirely new will.
* It’s the most recent will that takes effect upon death.
* the will does not speak until the testator’s death, so only catches what’s in the testator’s estate that is capable of passing under his will at the time of his death. By putting property in joint tenancy, Zwicker had taken it out of the inheritable property that he owns

Escrow

* idea is that the transfer is conditional and somebody holds the documents of transfer until the condition is fulfilled. Vendor puts title deeds of property in hands of a third party/escrow agent until purchaser comes up with purchase price, for instance.
* death is not a valid condition upon which a gift takes effect unless gift is executed under wills act, not a valid escrow.

Donatio mortis causa

* gift in contemplation of death, conditional on the donor’s death as contemplated.
* Person is lying on his deathbed, and you visit him, person gives you his belongings and if he carries out promise of dying, you get those belongings. This isn’t executed as a deed, transfer, or will. It’s just an oral statement by person on their sickbed: I’m dying, and if I die, you can have all my stuff.
* You actually have to be on the deathbed and making the gift at that time, and person has to pass away from the cause of their infirmity at that time.
* Donatio mortis causa, if valid, supersedes will if it conflicts, as it counts as an inter vivos gift and inter vivos gifts come before wills.
* Requires intention to make a gift in contemplation of the donor’s death. Something of sufficient delivery to donee (keyes, or piece of paper), and gift takes effect on donor’s death
* If person gets better, gift is revoked and property goes back to owner.

MacLeod v. Montgomery.

* Adds another element to completed gift of land; in a torrens jurisdiction, it’s not just delivery to donee, intention of donor, and acceptance by donee, you also need the transfer papers and registration to effect a completed gift.
* Montgomery is the registered owner of the property and the respondent was the granddaughter of Montgomery. Had Mrs. Montgomery made a gift to MacLeod of this property? She was donee of this property, intended recipient. Mrs. M filled in a transfer form to transfer the title to MacLeod, so we got through donative intent , delivery, acceptance, and completion of transfer document, got through first four steps.
* Mrs. M is saying i don’t want to give this gift to MacLeod, only doing this because my husband wanted me to, but he’s dead now. Equivocal expression of intention
* Mrs. M delivered the transfer form to MacLeod, who then went to LTO to register this transfer, Registrar couldn’t register this transfer in her name because the “duplicate certificate of title” was not in the LTO
* As long as there’s no mortgage on the property, Mrs. M is entitled to obtain a duplicate certificate of title, a document that’s sent to fee simple holder. As a registered owner, she could get this, for reason of tying up the title to avoid fraud/identity-theft
* As long as duplicate certificate is outstanding, the property cannot be transferred, title is frozen and cannot be dealt with.
* MacLeod filed a caveat to protect her interest in the land. Somebody who wants to get on the title to a property, wants to get a recorded interest, they can protect their interest as an unregistered interest holder by filing a caveat. This way, M can’t sell it to other people, they would have to take the property subject to caveat. In BC, caveat’s last only two months, then have to file certificate of pending litigation and start an action against Mrs. M.
* Mrs. M had made a gift but Mac couldn’t get registered. If all 4 steps are completed and all that’s lacking is the fifth step, who gets property
* Rule: to complete a gift effectively, “the donor (Mrs. M) is obliged to do what can be done.” What can be done is to return that duplicate certificate to the LTO. Mrs. M is obliged to do that, and since she didn’t, gift is not complete.

Equity in Macleod – the donor must do as much as can be done

* Equity will not force a volunteer to complete that which is not complete, nor will it force the donor.
* Equity will carry through or perfect a gift in a torrens jurisdiction if the intended donor, at time of death, has done everything they could do up to point of death to perfect this gift.
* Here, not everything that had been done had been done, she died with duplicate still outstanding, but made no motion to hand it over when she was alive. Gift fails, so land passes as part of Mrs. M’s estate to whoever’s entitled under her will.

Caveats

* to protect an unregistered interest as an unregistered donee, is to file a caveat, a “buyer beware,” a notice to the world that claiming an interest in this property as a donee, it’s notice of claim and she is a caveator.
* It freezes the title, but in BC it only lasts 2 months and must be replaced by a certificate of pending litigation, starting action to determine claim of caveator.

Presumptions (when Intention cannot be determined)

* In the absence an intention, the court of equity applies presumptions. These are ideas developed in court of chancery about what a typical person would do.
* If there’s no expressed intention one way or another, equity assumes people do not go around giving property voluntarily and so creates certain presumptions.
* Presumption of resulting trust: presumption is that typical person, if all the court knows is that A transfers property to B and B paid nothing for it (no consideration), it’s a presumption of resulting trust: B holds property as bare trustee and the beneficial interest bounces back by law that the beneficial interest goes back to A so that A has the benefit of the property and B just has the bare legal title, as the legal owner.
* This is a rebuttable presumption, if there’s proof of a relationship between A and B, then there can be a rebuttal of the presumption, evidence that A intended B to have beneficial interest,
* Presumption of advancement. Advancement must be parent to child or between spouses, husband to wife. Child, while no set age, must be dependent. If all they know is that there’s a transfer of property with no consideration, there is presumption of advancement.
* Rebuttable, evidence to indicate contrary intention.

**Class 21**

Will

* speaks at death (not at date of execution). Changes are by codicil. It’s revocable during the testator’s lifetime, hence why it’s called “last will and testament.”
* Changes of the will can be made subsequent to the original will, which is the starting point.
* When a person dies, we’re looking for the last will and testament. Chronologically, inter vivos, we go first in time, but when it comes to death, we start with the last will, which revokes all preceding wills insofar as there are inconsistencies.
* Or you can execute a codicil, which is a change to just one term of the will, instead of writing a whole new one.
* A will has to be in paper form. It must be in writing, and it must be signed by the testator and signed by two witnesses in the presence of each other and the testator.
* Residuary clause: put into will if you have specific gifts, that everything not otherwise disposed of by this will in my estate on my death would go to specified person.
* It must be signed by its testator AT ITS END. It’s also common practice to initial each page.
* Amanuensis: if the person is physicall incapable of signing, a witness can guide his hand across the page. Witnesses are not to take gifts under the will, if they get a gift in the will, it’s struck out as invalid.

Intestacy

* no will, testator is consent to let it pass under state administration rules.
* Partial intestacy; no residual clause disposing of the stuff not listed as specific gifts. Or a witness is a beneficiary and their gift is struck out, that gift is now passed on by residual clause, or in intestacy if no residual clause.
* A court will appoint an administrator of the estate, acts like an executor. Takes care of payment of debts and expenses and then distributes net assets.

Administrator/Executor

* Administrator/executor acquires the property in a fiduciary, not beneficiary, role, with sole purpose of disposing/distributing it.
* Executor gets the land, and holds it for the benefit of whoever it is left to under the will. It passes to the executor or administrator first before going to the beneficiary under the will.
* Has one year, called Executor’s Year, to administer the estate.
* It’s the net assets, after debts are settled, that end up being passed on to the beneficiaries.

Testamentary Trust

* If there’s a trust in the will, property will past to the trustee and the trustee can hold the property in trust and that trust can be registered on the title, so-and-so “in trust,” and the will will be filed in the LTO indicating a trust relationship, that this person does not hold fee as a beneficial holder, this protects the beneficiary.
* Trust are registered in BC under the LTO, but just “in trust,” not the full terms of the trust.

Property Estoppel

* because of your conduct, you cannot exclude someone from your property. You encouraged the other party to partake in this behaviour, he relied on your encouragement, and therefore, you must let him access your property.
* This can take the form of a registerable interest in the property, can register in the LTO as a charge on the property
* B is the owner of land, A reasonably relies on an expectation, B knows and encourages A in the expectation, by court order, A acquires an equitable right in B’s land.
* Having allowed A to suffer this detriment on the basis of what B said, B can’t suddenly renege and assert rights as a legal owner
* Whereas promissory estoppels is only a shield, proprietary shield is both sword and shield, can create the basis for civil action, or basis of claim on someone else’s property
* Remedy = the minimum equity to do justice. Could be an equitable fee simple, easement, or license, whatever is necessary but not excessive, what’s minimally necessary to fulfill the expectation generated by B.
* A’s interest is equitable, so if B sells the property to C and doesn’t tell C about it, A will lose his interest, as C is a bona fide purchaser for value without notice.. To prevent this, must register the easement on B’s title, C cannot claim to be the bona fide purchaser for value without notice because he would now have notice, it’s on the title. It goes on the title of both A and B’s properties.

Willmot v. Barber: The 5 probanda of Willmott and Barber. It says that A must establish 5 elements to succeed against B by establishing an equitable interest in Bs property

1. The plaintiff, A, must have made a mistake as to his legal rights
2. The plaintiff must have done some act of reliance
3. The defendant (b), the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff
4. The defendant must know of the plaintiff’s mistaken belief
5. The defendant must have encouraged

**Class 22**

Types of Proprietary Estoppel

* Estoppel by encouragement: encouraged A by various statements/promises
* estoppel as standing by: this is acquiescence. knowing a wrong is being done but making no complaint to indicate to the mistaken person that they are making a mistake, until reliance at detriment is already made.

Zelmer v. Victor Projects (owned by Bennett)

* Zelmers and Victor Projects own adjacent properties. Victor is upland property. Zelmers wanted to develop their undeveloped land. To do that, need to provide water to these lots. Approached Victor to determine if there could be some way they could build a reservoir on Victor’s land and gravity, water would flow down to Zelmer lots. Victor said yes, can build it over there, and have pipes running across my property to your lots.
* They drafted a plan saying where they were going to put it and sent it to Bennett for approval, Bennett’s assistant looked, said it was okay. After the reservoir was built, Bennett changed his mind and said it was built in the wrong place, had to be removed.
* Zelmers went to court to establish that they were entitled to this easement of where the reservoir was currently located on Victor’s property. Court upheld the Zelmers and said basis for proprietary estoppel. In this way, proprietary estoppels was the basis of a claim as opposed to a mere defence, it actually gave them a claim in an interest in property.

3 probanda of Zelmers

1. “is there an equity established? Must be a belief by the plaintiff in the existence of a right and that belief is created or encouraged by the words or the actions of the defendant
2. “What is the reasonable expectation of the Zelmers/plaintiff? What did Bennett do/say? Looking at equities of what Bennet said and did.”
3. “And then what is the remedy to be given in these situations.” (minimum equity to do justice to the plaintiff.)
* Acquiescence can be the basis in making an oral contract enforceable. Even if it`s not in writing, if there`s a general indication of what`s intended and you have acquiescence, it`s enforceable in equity.

Advantages of Torrens System:
1) Security of tenure
2) more efficient transfers, searching title
3) land as collateral security for credit (mortage)

More on the Torrens System

* Title = fee simple at top and charges underneath in chronological order of registration, regardless of whether legal or equitable.
* Indefeasibility goes to the registered fee simple holder, but this is not given to the charges
* Our torrens system does not guarantee the boundaries of the property. No provincial guarantee of boundaries. You have to have your own survey done to protect yourself, or you can buy insurance that can guarantee your boundaries.
* There`s an original certificate of indefeasible title that always stays in the land registry, never leaves it, you can get a duplicate certificate from the LTO and this you can take. However you can`t ask for a duplicate if there`s a mortgage on the property.
* When someone brings land under the Torrens sytem, the LTO staff verify the boundaries of the survey and they check the state of the title and they then provide for registration. Focus of the land title system, the torrens system, is land when it`s in private ownership
* What can be registered: legal estates and equitable trusts. General rule is that only those interests which are recognized as interests in land in common law, including equity, can be registered. As far as equitable interests go, BC is unique in that trusts can be registered on the title in BC. The beneficial interest isn`t listed on the title, only that the holder of the fee simple is holding it ``in trust``
* Other statutory interests created by LTA that are registrable: the caveat
* Anything that gets on the title must be vetted by the staff of the LTO.

**Class 23**

What can be Registered

* Under common law, any interests in land
* In BC, trusts, through words “in trust”
* Caveats. Expires in 60 days.
* Certificate of pending litigation, charge that is a notice to the world of starting litigation, no expiry of CPL until the lawsuit is settled, it depends on the outcome of the litigation.
* Execution (enforcement) of monetary judgments against holders of interest in land: creditor searches titles to find property I own, gets judgment against me for monetary sum and registers the amount of the claim on the title.
* Agricultural Land Reserves – This status would be on the land title. The land has to be kept in a big block, can’t be subdivided into smaller parcels, and must be used for agricultural purposes or similar purposes (golf course).
* Triggering events: filing under family relations act if divorce, filing under FRA can prevent sale of family asset. If there’s title to property in women’s name, man can make a filing that it’s a family asset and so should be divided on marital breakdown. Like caveat, people know this property is subject to family litigation.
* Heritage Designation: various old building designated as heritage, only certain things you can do with them, can’t be torn down, etc.
* Claim of Builders Lien: person who does work on construction project or provides equipment, if they are not paid can file a lien on the title, they can then sue on this lien and ultimately get an order for sale of the property to satisfy their lien claim.

What’s Not-Registrable

* Licenses
* Short-term leases (3 years or less)
* Zoning (will be in local government offices instead)
* Property taxes in arrears become a charge on the title, but won’t appear on it. Obligation passes to the purchaser, who must go to Property Tax Office. If you buy someone’s property and it’s owing property tax, you as the purchaser must pay it or sell property to satisfy, can then go after the vendor.
* Equitable mortgage by Deposit of Duplicate Certificate of Title: folks who are in tight corner financially can pledge valuable personal property to secure a loan from pawn broker, idea is that they will pay back pawn broker and pawn broker will give back personalty, or if they don’t for a period of time, the pawn broker can sell that personalty. You can do this with informal pledging of duplicate certificate of title as security of a loan. Bypasses formalities of a legal mortgage. No documentation, can be oral, mortgagee doesn’t get on title.
* Federal Crown Lands (First Nations Reserve): outside the Torrens system. It’s federal ownership, LTA is inapplicable, it’s governed by the Indian Act.

Claim of Aboriginal Title

* Aboriginal title is to be proven in court or by agreement in treaty. Constitutional protection of aboriginal title provided the title is established. First Nations, Dene, and Metis are protected. The claims could be made against Crown Land or possibly lands in private ownership, in Torrens.

Delgamuukw Case,

* claims Aboriginal Title is not registrable, cannot be registered under Torrens system.

Delgamuukw in 1997

* SCC was very sympathetic to the aboriginal claims of title, did not accept the claims, but said things that affirmed the possibility of success in claiming aboriginal title.
* aboriginal title is a totally separate type of organization and structure than the common law title with which the Torrens system is concerned. Abo title derives from entirely different process, based on pre-Euro settlement occupation of these areas by bands. Problem is that bands lack proof that they occupied those lands and that their occupation continued down through their descendant’s to present time. Our fee simple derives from Crown grant. Aboriginal ownership derives from prior occupation. Precedes Crown grant.
* Delgamuukw case established that Abo title is not marketable. Fee simple is each parcel has individual ownership, abo title was communal, no such things as individual parcels, land was held communally by a band and as stewards for their descendants.
* Abo title is inalienable, cannot be transferred, it can only be surrendered to the federal Crown.
* Abo title is not absolute, federal and provincial governments can infringe, but only if justified. These govn’ts must consult with the bands before infringingo n their title or claims of title, must consult with them and accommodate the abo interests at least as far as possible.

Skeetchestn Indian Band Case

* Band is claiming big chunk of interior of BC as the lands they occupied at the time of European settlement. Areas held in private ownership. The Band claimed abo title to this property and do not want development to happen. Band asked for an injunction and a declaration and in the mean time, while claim was proceeding through the courts, the abo band wanted to prevent development of the property they were claiming ownership of via caveat or CPL.
* Court said that abo title is not registrable, cannot register a claim of abo title because abo title is sui generis, it’s unique and doesn’t fit in common law model of land ownership, and therefore it cannot be registered as a claim against land. To be a caveat, the person must be filing a registrablee interest in land.
* Abo title is not marketable and they don’t part with land, they retain it for members of the band, opposite of marketable.
* Provincial Crown can’t extinguish it, but they can’t reserve it either, it’s outside the Crown’s ownership. Abo title is not a charge or incumbrance either, as it precedes the fee simple. Charge and incumbrance emanates from the fee, and this precedes that.
* Determining abo title: Ancestors occupied prior to British sovereignty in 1846 in BC. Continuity of occupation to the present. Finally, at sovereignty (1846), the band’s occupation was exclusive. Difficult to prove, as they have oral tradition, no written record/histories.

**Class 24**

Getting title to air space parcels

* To get to air parcel, all you get is a charge/easement on the title of the surface beneath. You can’t just say that x is owner of air and y is owner of the surface. You have to go through the process of the strata property act for air space parcel to separate fee simple of the surface from that of the air.

Creating a Strata

* Each unit is called a strata lot, they have a separate fee simple to each lot that is registrable.
* the surface is part of common area and each fee simple holder of the unit holds their proportionate share of the surface as a common property. That surface area could be owned by somebody else.
* Strata plan requirements: to successfully set up a strata project, one must file a strata plan with the LTO and that has to become registered. Role of the registry staff is to vet all these documents submitted to it for registration.
* Have to employ a BC Land Surveyor to do a land survey, then it has to be signed by the person applying and has to be endorsed by the approving officer (a municipal employee, like an engineer in the planning department), surveyor must sign off, then submit it to LTO.
* If you subdivide a lot, each lot has a fee simple. Divide a lot into two units. However, you can also create a common area around these units

Encumbrances: a judgment ( a monetary judgment), creditor (registers monetary judgments against person’s property), a mortgage, a lien, a Crown debt, all of this can be registered on the title.

Registering a Charge

* gets a presumption of validity, the LTO looks over the documents presented to register the charge and vets them, and will register them as a charge; this means the charge has made it through the vetting/assessment of the LTO staff, but doesn’t guarantee indefeasibility
* A fee simple can’t be attacked, but a charge is only a rebuttable presumption of validity, it can be attacked.
* However, you get statutory notice to the world, no one can claim to be bona fide purchaser ignorant of the charge, if it’s on the title, they’re deemed to have instructive notice

Priority Ranking

* ranking by priority of registration. Charges rank in chronological order from the time of their respective applications to register

Brining Land under Torrens

* First person who acquires title from the Crown is required to registered their title under Torrens system. After that, it’s purely voluntary, people don’t have to register if they don’t want to. Crown sells their land at fair market value
* They must then get the property properly surveyed. The survey division of BC Land Title and Survey authority will vet the survey and make sure it’s done to standards of the discipline. Boundary lines must be clearly determined. Boundary lines must be properly defined.
* The land title staff will look at whether there is a good safe holding and marketable title. S.169(1)(b)

Safe holding title

* means a title conferring possession that is safe from attack and cannot be displaced, indefeasible. The registrar is vetting this fee simple application with the view to saying that this is going to be something guaranteed by the province, and if we approve and register this, it will be given indefeasible status.
* Has to be marketable, means the title is freely alienable and not so defective that a reasonable purchaser could refuse it.
* Marketability means title can be forced upon an unwilling purchaser, as there’s nothing wrong with the land or the title.
* When a fee simple is registered, the registrar must issue a duplicate of indefeasible title upon application by fee simple holder

Transfer Inter Vivos

* No vetting of title required, just have to look at the transfer. Registrar must be satisfied that there is a sufficient description of the property being transferred.
* LTO just has to ensures names of parties are correct on title and making sure that legal description of what party is buying and legal description of property on title match.

If vendor sells property to two different purchasers

* go by date of execution of agreements, but by statute, you go by date of application to register. Which purchaser applied first?
* Application to register fee simple: the first application will be the successful one, regardless of actual application. When application number 2 gets registered first, whoever gets the register first is golden, the other person who is victim of fraud or mistake won’t get the property and has to settle for money. When the registration is completed, the time of registration relates back to time of application.

Transmission on Death

* Property passes from the deceased to the personal representative, and they become registered on the title, they would apply to LTO to change the registration of the title from name of the deceased to name of the executor or administrator, would take title in fiduciary capacity for beneficiaries, registered as “Y executor of the will of X”
* On completion of administration of deceased’s estate, end of the administrator’s year, then they transfer the title to the appropriate beneficiary, who may then register.

**Class 25**

Caveat

* whether the person sees it or not is irrelevant, as it’s a warning to the whole world by virtue of being registered on the title. It’s a warning that someone is advancing a claim to this property and it is registered on the title, endorsed on the title, at the time the application is received. A caveat may be lodged by anyone who claims to have an interest in registered land.
* Caveator is claiming a registrable interest in the property. Caveat not only serves as a warning, it in effect freezes the title, a prohibition on the registrar, who cannot register anything that might affect this caveator’s position. As long as a caveat lodged with a registrar remains in force, the registrar must not register any other instrument affecting the land described in the caveat. It freezes the register.
* Unregistered interest, an interest which you’d like to get registered but we can’t. These can be basis for caveat, things like an option to purchase, contract of purchase and sale (vendor sells property to me, it goes up in value, and he sells it to someone else or backs out), lessee, mortgagee, or donee.
* If a claim gets dismissed, the caveat would get removed.
* Caveat must be a claim for registrable interest in land, recognized by the common law as being an interest related to land
* A caveat automatically expires after 2 months and it is not renewable. Caveator, to keep it alive, must start a civil claim to litigate their interest, registering for a CPL, which says there is a pending lawsuit, which is on the title.
* Caveatee can give notice to caveator to commence action in 21 days, light fire under caveator, tell them to start the civil claim in 21 days or caveat expires.
* Caveatee may test validity of the caveat or the caveator may withdraw the caveat.
* On receipt, the registrar endorses title and sends copy to registered owner, so he’s informed about the caveat. Registered owner can dispute it and caveator can be liable to pay compensation for a wrongful filing of a caveat, “wrongfully and without reasonable cause,” like if they were filing caveat on the wrong title or property.
* Chronological order of application to register. Caveator is on first, then he is ranked first, other interest is ranked lower. If other interest is registered first, than caveator is ranked lower.

Certificate of lis pendens (law suit pending)

* Any person who has commenced or is party to a proceeding may register a CPL in same way that charge is registered. Like caveat, it’s not creating an interest in the property, it’s just protecting a claimed interest in the property.
* CPL protects interest of claimant and warns world that anyone buying property is going into a mess of litigation.
* After registration of CPL, the title is frozen once again, registrar can’t put more things on the title that affects claim, except, whereas the caveat expires in 2 months, the CPL continues until cancelled. There’s no time limit.
* CPL protects litigant and litigation process from third persons, protects litigants by holding title in abeyance and preventing transactions, can’t have land sold out from under them.
* Also gives notice to the owner that there’s problem with their title and someone is suing them.
* Registered owner will get a copy of the CPL and may dispute this. CPL must be for a registrable interest for an estate or interest in land. You must file CPL to give jurisdiction to the court.
* If claimant loses, claim is defeated, CPL is discharged and removed from title by registrar.
* Again, first in time, first in right

Rudland v. Romilly

* Registrar says that after registration of pending litigation, the registrar must make not register anything affecting the land until the CPL is cancelled. Registrar said the application is frozen, cannot proceed past application phase, because the CPL has frozen it, it’s been cut off.
* Court says to registrar that they must register the transfer, but registrar said can’t do it. Court is saying register, but the legislation says can’t register.
* Act was amended: registrar should proceed with the registration of the prior charge despite the application to register if prior applicant is not party to the CPL
* Legislature never contemplated the possibility that there could be an application to register, then in six day gap between application and registration, what happens if CPL gets in the middle? Court says you apply basic equity that that applicant is the bona fide purchaser for value, can’t be counted as knowing about the pending litigation, as when they applied, CPL wasn’t on the title.
* If the person with the prior charge is also a litigant then they have notice of the claim and they don’t get equitable claim of bonafide purchaser for value without notice.

Liens (selling debtor’s property)

* A secured creditor has a lien on property such as a home or car. Lien is an interest in property that a creditor can use to satisfy a debt. Liens can be contractural (mortgage or auto loan) or Statutory (lien on property resulting from unpaid taxes or unpaid builder)
* A secured creditor, like mortgage gives link between amount of debt and the asset. If mortgagee is not paid, can conduct foreclosure proceeding, get order for sale of the property, get their money out of the house as security for the loan.

Money Judgments

* If you don’t have statutory lien, unsecured creditor, have to get money judgment against debtor. Can’t sell his property satisfy if debtor won’t.
* If the debtor doesn’t pay voluntarily, unsecured must get a judgment from the court, this is a monetary judgment. The debtor is supposed to pay this, as a judgment debtor, if they don’[t, then the judgment creditor must take further steps to enforce the judgment. Small claims court is the debt collection part, claims up to $25K, More than this go to BCSC.
* No right to enforce claim against debtor’s assets until after judgment. Even then, no security interest, registration on title is just the first step towards execution.
* Turn file over to debt collectors, and if they still can’t get it, they give file back to creditor, who will start an action in court, court orders debtor to pay the money, but debtor still doesn’t pay money, then we get execution.
* Execution = finding out what assets debtor has, where they are, and taking execution proceedings against those assets to collect the money. Proven in court that debtor owes the money, so have to collect out of assets as he won’t pay voluntarily.
* Judgment can be registered on title, amount is listed “against the title,” and the money judgment in itself lasts for 10 yrs. The registration on the title is valid for 2 years, then can be renewed for 2 year periods. As this is going on, interest is running on this judgment and if debtor wants to take it to the next step, can get an order from the court for sale of the property.
* Mistaken identity: compensation for loss due to wrongful filing, like if the debtor puts the judgment on the title of the wrong person.
* Charge for money judgment on title rank ahead of later mortgages and transfers but is subject to prior registered or unregistered mortgages or transfers. Contrary to torrens system, prior charges or mortgages rank ahead of the judgment, even if unregistered.

**Class 26**

Execution Purchasers

* If you’re buying property through involuntary court order sale, you do not get indefeasibility.
* Creditor has a charge on the property to the extent of the debtor’s beneficial interest in the property. Creditor can get no greater interest than what the judgment debtor owns.
* Purchaser, when creditor does a court ordered sale, will step into shoes of the debtor. However, this is subject to unregistered interests, the purchaser is not a bona fide purchaser.
* If Judgment debtor, has unknown to creditor, sold property to purchaser, the sale to the previous purchaser will go through and the money would be paid by that purchaser to the debtor, the creditor will be left with nothing and will not get judgment.
* If judgment debtor sells to purchaser, he does not have a “clear title.” The Purchaser’s title is subject to registered judgment. If there’s a judgment on the property, you have to pay off that judgment to get clear title. You’re not bona fide, as it was registered on the title.

Executing Joint Tenancy

* If debtor dies first, the entire property passes to the other joint tenant and the judgment tenant gets nothing. Right of survivorship goes above this judgment on title. This is why you want to go for court order of sale immediately, in case debtor dies first.
* However, if the joint tenant dies first, the whole property is for benefit of the creditor.
* Tenancy in common: nemo dat applies again, can only sell this person’s 1/3 interest in the property. Co-owned property can be the subject of execution proceedings, but there are practical limitations to that approach (who would buy a 1/3 interest or co-ownership? Who would want to live in this hostile situation?)